

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KATHLEEN A. SENESE

Plaintiff

v.

KATHLEEN G. JOHNSTON

Defendant

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CIVIL ACTION

NO. 01-5190

Newcomer, S.J.

August , 2002

O P I N I O N

Presently before the Court is Plaintiff's Motion for a New Trial and Defendant's Response. For the reasons stated below, Plaintiff's Motion is denied.

BACKGROUND

Plaintiff, Kathleen Senese, brought suit against Defendant, Kathleen Johnston, in the wake of a November 19, 1999, automobile accident which Plaintiff claims caused extensive injuries to her back, right knee and wrists. Despite her \$300,000 claim and a settlement offer of \$75,000 by the Defendant, on May 30, 2002, after a three day trial a jury found the Defendant liable to the Plaintiff for only \$40,000.

Plaintiff brings the instant motion to remedy what she believes to be an award of insufficient damages.

DISCUSSION

I. LEGAL STANDARD

Federal Rule of Civil Procedure 59(a) indicates that a new trial may be granted, "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Granting a new trial because damages were insufficient is only appropriate where the jury has awarded damages in an amount, "'substantially less than was unquestionably proven by plaintiff's uncontradicted and undisputed evidence.'" Semper v. Santos, 845 F.2d 1233, 1236 (3d Cir. 1988) (quoting Taylor v. Bennett, 323 F.2d 607, 609 (7th Cir. 1963)). "Damages assessed by a jury are not to be set aside unless shocking to the judicial conscience or so grossly inadequate as to constitute a miscarriage of justice...or unless the jury's award indicates caprice or mistake or clear abuse of its fact-finding discretion or the clear influence of partiality, corruption, passion, prejudice, or a misconception of the law...." Tann v. Service Distributors, Inc., 56 F.R.D. 593, 598 (E.D.Pa. 1972) (Becker, J.). Keeping these standards in mind, we turn to the facts in the matter before this Court.

II. APPLICATION

Throughout her case in chief, Plaintiff presented overwhelming amounts of detailed evidence pertaining to her injuries in the form of testimony from herself as well as doctors Delasotta, Gerson and Mansmann. This testimony is discussed at length on pages 9 through 16 of Plaintiff's Memorandum of Law. While the exact details of this testimony need not be, nor could they be, restated here, it is sufficient to note that viewed cumulatively, the evidence established that as a result of the accident the Plaintiff required or requires surgery on her right knee, wrists, neck and back. In addition, the Plaintiff testified to her daily pain and inability to perform normal activities which she was able to perform prior to the accident.

Despite this evidence, the jury awarded only \$40,000. This award can be better understood from an examination of what evidence the Defendant was able to elicit during the trial. The Defendant established that the state trooper's report from the accident scene indicated that the Plaintiff made no complaints of any injury immediately after the accident and that she denied immediate medical assistance. Furthermore, the defense established what may appear to some to be a sporadic history of treatment. In addition, the Plaintiff had sustained injuries previous to the accident in some of the same areas she claimed to

have been injured as a result of the accident. Finally, the Plaintiff's testimony contradicted some of her doctors' records with regard to visits and treatments rendered during those visits.

Although unfortunately low, the \$40,000 award in this case does not offend or shock the conscience of this Court.¹ In addition, as addressed above, the award is not substantially less than was proven by plaintiff's uncontradicted and undisputed evidence. Furthermore, the jury's award does not indicate mistake, corruption, prejudice or a misconception of the law. Because the Plaintiff fails to meet the standard necessary to grant a motion for a new trial, this Court must deny Plaintiff's Motion.

AN APPROPRIATE ORDER WILL FOLLOW.

Clarence C. Newcomer, S.J.

¹ The Plaintiff is correct in indicating that this Court encouraged the parties to settle for \$300,000 (the amount originally demanded by Plaintiff). However, Plaintiff neglects to reveal that the Court did so in pretrial negotiations without being furnished with important facts (as discussed above) which were later presented to the jury by the Defendant.

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KATHLEEN SENESE	:	CIVIL ACTION
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Plaintiff	:	
	:	
v.	:	
	:	
KATHLEEN JOHNSTON	:	
	:	NO. 01-5190
	:	
Defendant	:	
	:	

O R D E R

AND NOW, this day of August, 2002, upon
consideration of Plaintiff's Motion for a New Trial (Document 21)
and Defendant's Response (Document 22), it is hereby ORDERED that
Plaintiff's motion is DENIED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.